

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 52 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

MORVI TIME CO.

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 04/11/98

ORAL JUDGEMENT

The assessee is a firm which prior to its dissolution on 7.11.1975 had three minors, viz. Jayesh B.Mistry, Lata B. Mistry and Sangeeta B.Mistry, admitted to the benefits of the partnership. After dissolution of the firm, new partnership agreement came into existence according to which all the aforesaid three minors were left out and

the remaining partners decided to carry on the business with the same name and decided to use the goodwill of the firm as well. At the time of dissolution, minors were entitled to share in the property in the ratio of 30:15:15 respectively. According to the terms of the dissolution deed, minors were entitled to share the goodwill in the ratio in which they shared profits in the firm. It was further envisaged that it is not possible to ascertain the value of tangible rights such as goodwill, quota rights, selling agency rights and other business concessions. In consideration of agreement to allow the new firm to use intangible assets, it was agreed that the firm will pay to the minors Rs. 4000/-, 2000/and 2000/per month respectively. The firm has claimed deduction from its profits and payment made to the said minors. The ITO upto assessment year 1977-78 allowed such claim of deduction to the assessee firm. However, for assessment year 1977-78, the Commissioner of Income tax in exercise of his power under Section 263 had set aside the said allowance by holding that minors admitted to the business of partnership are not entitled to share in the estate of the firm on their retirement. Following the decision in the assessment year 1977-78 rendered by CIT under section 263 for the assessment years 1978-79 and 1979-80, the ITO disallowed the claim of the assessee. The assessee filed appeals against the orders for the assessment years 1978-79 and 1979-80. While these appeals were pending before the CIT, the Tribunal had decided the appeal for the assessment year 1977-78 and allowed the claim of the assessee. Following the order of the Tribunal, CIT (Appeals) allowed the assessee's appeals for the two years in question also. The appeal of the revenue against the order of CIT(Appeals) was dismissed by the Tribunal following its earlier decision in the case of the assessee for the assessment year 1977-78. As the Tribunal decided the two appeals by a common order notwithstanding there being two separate Reference applications, the Tribunal has submitted one statement of case and referred the following question of law for decision of this court arising out of its appellate order for both the assessment years :

"Whether on the facts and in the circumstances of the case, the tribunal was right in law in coming to the conclusion that under the provisions of sec.30 read with sec.48 of the Partnership Act, 1932, the minors who were admitted to the benefit of partnership were entitled to a share in the goodwill, quota rights, selling agency rights and other business connections?"

Against the decision of the Tribunal in IT Appeal No.

2239/80 dated 16.12.1981 in the case of this very assessee, the very same question was referred to this court for its decision in ITR No.319 of 1982. It has been pointed out by the learned counsel for the Revenue that the said ITR 319 of 1982 has been decided on 27.11.1995 and the question has been answered in the affirmative that is to say, in favour of the assessee and against the revenue..

In the aforesaid circumstances, following the earlier decision of this court referred to above, we answer the question referred to us for the assessment years 1978-79 and 1979-80 also in the affirmative that is to say- in favour of the assessee and against the Revenue. There will be no order as to costs.

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